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HUMAN RIGHTS COMMITTEE

Seventieth session

SUMMARY RECORD OF THE 1880th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 24 October 2000, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.00-45288 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Peru (continued) (CCPR/C/PER/98/4; CCPR/C/70/L/PER)

1. At the invitation of the Chairperson, the members of the delegation of Peru resumed their places at the Committee table.

2. Mr. BHAGWATI said that the comprehensive report submitted by Peru, supported by the delegation's replies to the Committee's list of issues, gave a broad picture of the human rights situation in the country. However, there were still many gaps that were of concern to the Committee. In particular, concern had been voiced about the independence of the judiciary. In his view, the independence of the judiciary was the basis of the rule of law. Although he had been glad to note that the system of "faceless judges" had been abolished, he remained very concerned about the position regarding the Constitutional Court. What was the reason for the removal of the three judges mentioned? Was the Court able to function at all after their removal? How many judges were still in place? The cause of removal seemed to have been a judgement that had gone against the Government and the President. What was the jurisdiction of the Constitutional Court? Was it required to adjudicate on the validity of legislation? He noted that the Covenant, as an international treaty ratified by Peru, was said to be part of domestic law. He would like to know what the position was if that law was not consistent with the Covenant. Which party would have to give way? Mention had been made of juridical reform and he would like to know precisely what was meant. There should be no attack on the independence of the judiciary under the guise of reform.

3. He was also concerned about the constitutional provision relating to the declaration of a state of emergency. Paragraph 55 of the report spoke of a "disturbance of the peace" as possibly giving rise to such a declaration. That wording seemed to him to be too broad and he wondered how it complied with the provisions of article 4 of the Covenant.

4. He shared the concern expressed by Ms. Evatt about the position of women in Peru, and would like to know what machinery had been set up to implement the Protection against Family Violence Act. How many complaints had been brought and what action had been taken? Had shelters been established? How long did it take to secure a protection order and how could protection be assured in the interim? He also shared the concern expressed by other members of the Committee regarding abortion and enforced sterilization. The Committee had learned that there was a significant differential between the wages of men and women and he would like to know in what areas that differential persisted. He would also welcome information about equal access by indigenous women to education.

5. With regard to article 8 of the Covenant, the Committee had received reports of slavery-like practices, including debt bondage, in two regions of Peru. What measures were being taken to eradicate those practices? Information emerging from the report of an ILO expert committee suggested that access to jobs and promotion was often influenced by racial

considerations. Were any steps being taken to improve that situation? In connection with enforced disappearances, he asked how the amnesty laws of 1995 could be said to comply with article 2 of the Covenant. Lastly, he would like to know how sentences of solitary confinement for up to 12 months, as ordered by military courts, could be said to be compatible with the Covenant's provisions.

6. The CHAIRPERSON invited the delegation of Peru to respond to the oral questions asked by members of the Committee.

7. Mr. QUESADA INCHAUSTEGUI (Peru) said that he would take first the question regarding the role played by Mr. Montesinos in the events at La Cantuta and Barrios Altos, and whether he faced prosecution in that connection. Respecting the event at La Cantuta, two trials had been held in a military court, the first involving three senior officers. Eleven officers had been given sentences ranging from 1 to 20 years' imprisonment. The other case had involved Mr. Montesinos and two generals as the alleged instigators. The judgement handed down on 15 August 1994 had been confirmed by the Supreme Military Council some days later. In the case of the incident at Barrios Altos, the amnesty laws had been applied. The persons involved had been released and the role played by Mr. Montesinos would be determined by the competent courts. It was not true that the order handed down had thanked Mr. Montesinos for his services. It had formally terminated his appointment as adviser to the National Intelligence Service and nothing more.

8. A question had been asked about arrangements to guarantee the independence of the provisional judges. The Judiciary Organization Act made provision for the appointment of temporary judges when required by the absence or incapacity of permanent judges of the Supreme and Higher Courts. The persons appointed to the provisional judgeships were all career professionals and were specifically forbidden to engage in politics. Their appointment had been in response to the requirements of the thousands of cases left unresolved because of the shortage of judges. Article 152 of the Constitution established that, in order to be a judge, an applicant must be a graduate of the Judicial Academy and have passed a public competitive examination. More than 300 new candidates had now graduated from the Academy and were awaiting selection by the Judicial Council. It had been suggested by the OAS Round Table that the conditions of the examination should be modified to allow for the speedier appointment of new permanent judges.

9. The Judicial Council was an autonomous organ under the Constitution, responsible for the selection, confirmation and dismissal of judges and officials of the Public Prosecutor's Office. Graduation from the Academy was a requirement for appointment. The decision to extend the required training course at the Academy by a further 18 months had been much criticized and had delayed the new appointments recommended by the Round Table.

10. Mr. CHAVEZ BASAGOITIA (Peru) said that a number of questions had been asked about prison conditions, in particular overcrowding and the situation in the maximum security establishments. Mr. Solari Yrigoyen had referred specifically to overcrowding at Lurigancho prison, where some 1,800 prisoners were held in premises meant for 500. The Government was well aware of the problem and had adopted a two-prong strategy for dealing with it, first by reducing the number of prison sentences imposed and granting more pardons. In the past year,

some 1,800 pardons had been granted, as many as in the previous eight years combined. Steps were also being taken to limit detention pending trial where that could be done without endangering public security. Efforts were also being made to use alternative penalties.

11. The second approach was to the building of new prisons. One shortly to be completed would hold 1,000 prisoners and should help to reduce the overcrowding in Lurigancho considerably. Despite those efforts, however, capacity was not increasing as fast as the prison population, partly because of the lack of State resources and partly because of an increase in crime. The Government was now concentrating on reducing the causes of crime and it was hoped that results would soon be visible.

12. On maximum security prisons, questions had been asked about Yanamayo and Challapalca in particular. Conditions in those two establishments had been described in the reply to question 16 of the list of issues. They might seem harsh but they were necessary, given the dangerous nature of the criminals concerned. Those prisons were used exclusively for persons convicted of terrorism and treason. There were 478 prisoners in all in the two establishments, 101 in Challapalca and 377 in Yanamayo. Together they constituted 2 per cent of the nation's total prison population. Conditions there were in fact better than in other prisons in terms of space, food, health care and rehabilitation programmes.

13. There had also been a question about what the Government was doing to combat the practices of torture and maltreatment. In 1998, torture had been made a specific crime in Peru. There had been 45 complaints of the crime of torture at the national level. Statistics regarding the number of judgements handed down would be given in writing at a later date. The Supreme Court had already issued judgements in two cases of torture, one against the navy and the other against the police. It was conceded that special educational efforts still needed to be made vis-à-vis the police, the armed forces and the judiciary. The Government had reaffirmed its determination to fight the scourge of torture on various occasions. It had worked closely with the Committee against Torture, seeking guidance from it with a view to improving national practice. In September 1998, it had received a visit from the Committee under article 20 of the Convention against Torture. The Committee had not yet decided whether or not it would make public the conclusions of that visit but it had noted, in its report to the General Assembly (A/55/54), that the visit had been carried out and had recorded its satisfaction at the cooperation received from Peru throughout.

14. In response to the question about complaints of enforced disappearances, he would draw attention to the figures provided by the Working Group of the Commission on Human Rights on that question. According to the Working Group, there had been no complaints since 1995. At the same time, the Working Group had noted that there was still a large number of complaints in regard to which no investigations had been carried out. The Government was currently trying to work out a system of cross-checking the list of disappearances provided by the Working Group against the national register of crimes and the register of migratory movements. The Committee would be informed of the results achieved.

15. In response to Mr. Kretzmer, he said that the persons to whom he had referred could not be heard as witnesses. Mr. Solari Yrigoyen had asked for information on the situation of Ms. Margarita Silva, sentenced for terrorism by the Supreme Court in 1997. The Government

would continue to look further into the question. Mr. Yalden had asked for statistics regarding racism. The reply was the same as that made to the Committee on the Elimination of Racial Discrimination in response to a similar request. There were no statistics because government authorities in Peru had no power to classify persons according to a particular ethnic group and official documents contained no reference to race.

16. On the powers of the legislature, he said that, under article 104 of the Constitution, the Executive could legislate by issuing legislative decrees, subject to indication by Congress of the subject of the decree, the period during which it would be in force, and so on. The decrees need not be ratified by Congress, but Congress had the power to examine them and amend them a posteriori. Detention in police custody was ordered by the courts on the recommendation of the Public Prosecutor's Office. Three criteria must be fulfilled: evidence must exist linking the accused to the crime; the accused must, if found guilty, be liable to a penalty of more than four years' imprisonment; and there must be a danger that, given his past record, the accused might attempt to evade justice. In line with the policy of reducing overcrowding in the prisons, efforts were being made to order detention in as few cases as possible. The 15 days of detention incommunicado which could be imposed in cases of drug trafficking, terrorism and espionage were optional rather than mandatory. Two weeks was the maximum. Those three offences usually involved organized crime, which made it impossible for the police investigation to be completed within 24 hours.

17. In reply to Mr. Bhagwati's question about the situation regarding domestic law and international treaties, he said that the 1993 Constitution contained no radical change in substance from the Constitution of 1979. Temporary priviso 4 stated that norms relating to the rights and liberties recognized by the Constitution were to be interpreted in conformity with the provisions of the Universal Declaration of Human Rights and treaties ratified by Peru. In interpreting the guarantees afforded by the Constitution, the judge was required to act in conformity with those important international agreements. He noted in that connection that Peru had recently ratified the Convention on the Law of Treaties.

18. Ms. MARAVI (Peru) said members of the Committee had asked for statistics concerning civilians sentenced by military courts. Between August 1992 and October 2000, the military courts had sentenced 830 civilians for treason. Between May 1998 and October 2000, 261 civilians had been sentenced for aggravated terrorism. For the crime of treason, 427 persons had been sentenced to life imprisonment and 357 to 20-35 years' imprisonment. For aggravated terrorism, 91 civilians had been sentenced to life imprisonment and 240 to similar lengthy imprisonment. Currently, 162 civilians accused of treason were awaiting trial. The military courts had released 64 persons detained on suspicion of treason, and 414 cases had been delegated to the civil courts. Twenty-six persons accused of aggravated terrorism had been released, and in 105 cases it had been found that there were insufficient grounds to proceed.

19. She would provide statistics to the Committee at a later stage concerning implementation of the recommendations of the Ombudsman, the position of women in society, women's participation in political life and the rights of pregnant women.

20. Mr. LAZO PICCARDO (Peru), replying to a question on domestic violence, said no pressure was exerted on women to effect a reconciliation in such cases. On the contrary, two special courts had been set up to deal with the problem. Local public prosecutor's offices were obliged to take up such cases. Reconciliation between the parties would only be sought on the basis of a firm commitment to end any acts of violence, and failing such a commitment, the case would be referred to the Family Court.

21. In reply to the question as to what steps were being taken to solve problems arising from the application of contraceptive measures through surgical intervention, he said the public had free access to information concerning a variety of contraceptive services provided by the Ministry of Health. No pressure was brought to bear on anyone to make use of such services, and any kind of manipulation of individuals, their families or their legal representatives was prohibited. The health authorities were not permitted to set targets or quotas for acceptance of contraceptive services, or to offer any kind of reward or punishment. Persons could only undergo sterilization of their own free will and following a period of at least 72 hours in which to reconsider.

22. In response to a question concerning a judge accused of terrorism, he said that in 1997 the judge had upheld an application for habeas corpus in respect of the spouse of a person accused of terrorism. The Ministry of the Interior had issued an order authorizing the initiation of proceedings against the judge, but that order had subsequently been quashed. In regard to the case of the removal of certain judges of the Constitutional Court, he said that no replies had been given concerning complaints by the judges concerned of searches of their offices and removal of documents. The Inter-American Court of Human Rights was currently studying a proposal for an out-of-court settlement of the dispute. A working group of the OAS Round Table was currently studying a proposal for reform of constitutional law with a view to ensuring that the Constitutional Court operated more efficiently. The solutions proposed included the reinstatement of the judges concerned. The proposals would be approved by Congress only if consensus was reached on them at the plenary meeting of the Round Table.

23. In reply to the question when Peru would resume its recognition of the competence of the Inter-American Court of Human Rights, he stated that the decision to withdraw recognition had not been connected with the presidential election, but had been on the grounds that in certain cases the Court had exceeded its authority by issuing rulings which would require Peru to amend its national law and its Constitution. For instance, it had ordered the retrial of terrorists who had already confessed and been convicted. Under existing law, such a retrial would not have been regarded as valid, and if it had resulted in the release of the terrorists concerned, it would have set a very undesirable precedent for future cases of terrorism. Withdrawal of a declaration of recognition was a right of States, inherent in the unilateral nature of the declaration itself. Such declarations were recognized as being different in character from treaties in that no special mechanism for denouncing them was required. The fact that withdrawal was not explicitly provided for in the declaration did not rule out such a withdrawal being made. However, there was consensus that Peru's relations with the Inter-American Court of Human Rights should be regularized, and that issue too was currently being studied by a working group of the Round Table.

24. In reply to a further question, he said Peru had agreed that another OAS Round Table working group should consider the possibility of restoring the nationality of Mr. Ivcher Bronstein. However, no solution had yet been found regarding the ruling banning Mr. Ivcher Bronstein from exercising his rights as a shareholder in Channel 2, since a case involving a dispute between shareholders was still before the courts. That case had been expected to last 15 days but had in fact continued for 15 months, after which the directors of Channel 2 had made an application for the company to be declared bankrupt. The Ministry of Justice had recently requested the judge to speed up his handling of the case, and had indicated that action would be brought by the body responsible for monitoring the judiciary should delays continue. He added that proposals for improving administrative procedures for dealing with bankruptcy were currently being studied.

25. In reply to a question concerning the constitutional authority of Congress to enact or amend legislation, he said that that authority did not affect the power of the judiciary to interpret the law. Congress could not interfere in any way with the judge's functions. Indeed, judges had enormous power in Peru, and could refuse to enforce laws enacted by Congress if they considered them unconstitutional.

26. In response to a further question, he said that while it was true that more than half the prison population consisted of persons held in pre-trial detention, the vast majority were detained only for the periods authorized by law, namely 4 months in the case of normal proceedings and 60 days in the case of summary proceedings. If pre-trial detention exceeded 15 months, the law required that the detainee should be released.

27. Lastly, in reply to a question from Ms. Evatt, he said that in Peru, as in many other countries, abortion was a social rather than a legal problem. Legislation on the matter must reflect not only the wishes of the Government but also popular feeling, individual conscience, the rights of women, and religious sensibilities, factors which were often hard to reconcile. Peru's approach was pragmatic in that it did not prohibit abortion in cases where there was a threat to the life of the mother. In cases of abortions following rape or following an unwanted pregnancy, the penalty imposed was a token one, namely deprivation of liberty for not more than three months.

28. Ms. EVATT thanked the delegation for the information given.

29. It had been stated that it was necessary to appoint provisional judges because of the large backlog of cases awaiting trial. Such provisional appointments, which were not seen as acceptable under article 14 of the Covenant, seemed to have become an institution in Peru in that they had accounted for 80 per cent of all appointments to the judiciary over a number of years. Did that mean that Peru found it acceptable that 80 per cent of its judges had not been appointed or evaluated by a constitutional court, as required by the Constitution?

30. Concerning the delegation's reply on abortion, she noted that no concern had been expressed about the large number of women who died every year as a result of illegal abortions.

31. Mr. BHAGWATI said the delegation had stated that obligations under international treaties were taken into account in interpreting domestic law. However, his question had been whether domestic law was regarded as invalid if it was inconsistent with the Covenant or with any other treaty ratified by Peru. He would also appreciate an answer to his question on the practice of debt bondage affecting the indigenous population in certain areas, particularly in the agricultural, animal husbandry and logging sectors. What steps were being taken to eradicate that practice?

32. Mr. SOLARI YRIGOYEN recalled that he had asked whether Supreme Decision No. 424 accepting the resignation of Mr. Vladimiro Montesinos from the National Intelligence Service had included an expression of thanks for the services he had rendered to the nation.

33. Mr. QUESADA INCHAUSTEGUI (Peru) said it was true that the decision had originally included the expression of thanks just cited. However, it had subsequently been found to be a mistake, and an amended version had been issued. The decision referred to had thus been superseded.

34. In reply to Ms. Evatt, he said that many of the judges classified as provisional were in fact titular judges. His delegation could provide the Committee with statistics on the matter at a later stage. There had been a decline in the number of abortions, and in associated maternal mortality rates, in recent years. There had also been a marked decline in pregnancy rates in general, due to improved implementation of family planning policies and wider access to information on birth control.

35. In response to the question from Mr. Bhagwati, he said that it was for the judge to interpret national law in a manner consistent with the provisions of treaties ratified by Peru. There was no specific law regulating the matter, but in general the norms followed were those set out in the Vienna Convention on the Law of Treaties.

36. There had regrettably been reports of cases of slavery and debt bondage in remote jungle areas. There was a lack of concrete information, and control and supervision by the Government in some parts of the country, particularly the Amazon region, was very difficult, although legislation was in place to protect indigenous communities. Such areas were also affected by terrorism, and many of the acts referred to had been perpetrated by Sendero Luminoso. He would provide the Committee with further details in writing.

37. Mr. CHAVEZ BASAGOITIA (Peru), in reply to question 20 of the list of issues, said that aliens subject to an expulsion order issued by the Ministry of the Interior had the right to appeal against that order before the courts under a law governing administrative procedures.

38. In response to question 21, he said that article 2, paragraph 3, of the Constitution recognized the principle of religious freedom. According to article 50, the State, while collaborating with the Catholic Church in recognition of its formative historical, cultural and moral role in Peru, also respected other religious denominations and was free to cooperate with them. Under the existing legal tradition, the Catholic Church enjoyed public legal personality, while other denominations were established as associations under the Civil Code. Every religion was completely free to preach and manifest its beliefs. Ministers of all religions could carry out

the duties of their office publicly and in private. Marriage ceremonies could be conducted in accordance with every religious rite, but such ceremonies, even in the Catholic Church, did not enjoy civil status. Every religious denomination could build places of worship and establish cemeteries. As article 14 of the Constitution required the education system to respect "freedom of conscience", all religions were free to establish and run educational centres at every level of education, including higher education. Both Catholic and non-Catholic religions enjoyed various forms of tax exemption and relief.

39. Mr. QUESADA INCHAUSTEGUI (Peru), replying to question 22, said that Peruvian legislation guaranteed full freedom of expression. There was no policy of persecution of journalists or media proprietors. Isolated cases of improper behaviour by local authorities were duly punished. The Ministry of the Interior had reminded regional police chiefs of the need for strict compliance with the rules designed to ensure that journalists could practise their profession freely. Where threats or intimidation were reported, appropriate investigations were immediately conducted and the alleged perpetrators brought before the competent authorities.

40. Mr. Ivcher Bronstein had not been stripped of his Peruvian citizenship. An executive decision had suspended his entitlement to nationality status but the Supreme Decision conferring nationality on him had remained in force. Pursuant to legal proceedings brought by his fellow shareholders, his rights as a shareholder in the television station of which he was the joint owner had been suspended. As the issue of a new passport by the Peruvian consulate in Tel Aviv had validated his nationality status, there seemed to be no need for further legal action. It was for Mr. Ivcher Bronstein himself to resolve the dispute among the shareholders of the television station. His case was currently being considered by OAS.

41. Replying to question 23, he said that under a commercial agreement to publish the newspaper Referendum concluded between the publisher Boris Romero Ojedo and the journalist Fernando Viaña, the latter had undertaken to cover the costs of ink and newsprint but had failed to do so. The agreement between the parties had therefore been terminated in early October 1999 and Mr. Romero had sought to recoup his losses by selling the newspaper in late November.

42. The Constitution guaranteed freedom of information, opinion and expression, and any act aimed at suspending, closing or preventing the free circulation of a medium of communication was considered an offence. Criminal proceedings had been brought against journalists in some 225 cases between 1990 and 1999. The majority were disputes involving journalists and individuals in which the political authorities had played no part. Most of the cases had been dismissed.

43. The budget for official announcements was apportioned on the basis of available measurement techniques and advice from the largest and most prestigious agencies in the market. The State's contracts with the media were based, inter alia, on television and radio audience studies, readership studies, geographical coverage, quality factors and cost-benefit considerations. State publicity material was also distributed in the "opposition" press or in media critical of the State.

44. Mr. LAZO PICCARDO (Peru), replying to question 24, said that the National Family Welfare Institute, a decentralized agency of the Ministry for the Advancement of Women and Human Development, was conducting a project on behalf of children and women who were homeless or in moral or physical danger and a programme covering 14 cities designed to discourage child labour and to protect working adolescents. The National Police were also running a programme for child and teenage street workers to ensure their protection, respect for their rights and support for their all-round development. Another police programme provided training opportunities in vocational education workshops with a view to discouraging street trading and its attendant dangers. The children gained skills that could be used, inter alia, in the food and clothing industries, electricity and electronics, and ceramics.

45. Under article 185 of the Code on Children and Adolescents, no adolescent could be deprived of his or her liberty without a written warrant by a judge, supported with reasons. An exception was made in cases where a teenager was arrested while committing a criminal offence. Adolescents who believed that they had been arbitrarily detained could challenge the order depriving them of their liberty and bring habeas corpus proceedings before a specialized judge.

46. The Office of the Ombudsman for Children and Adolescents was an agency of the National System of Integrated Care for Children and Adolescents, which operated at the local level in public and private institutions and civil society organizations. Its object was to promote and protect the rights of children and adolescents under the law. As at 31 August 2000, there had been 1,229 such offices throughout the country. Of the total of 73,466 cases dealt with in 1999, 42 per cent had concerned food aid and 39 per cent had involved children under the age of five.

47. The Offices of the Ombudsman were assigned eight functions under the Code on Children and Adolescents: monitoring the situation of children and adolescents in public or private institutions; intervening when their rights were threatened or violated; promoting the strengthening of family ties; monitoring family placements; promoting voluntary recognition of paternity; coordinating welfare programmes for working children and adolescents; providing a multidisciplinary family counselling service; and reporting any offences against children or adolescents to the competent authorities.

48. Replying to question 25, he said the OAS election monitoring mission had concluded that the general elections held that year in Peru had fallen far short of international standards. It had subsequently amended its position, stating that no fraud had occurred. Hence, the people's will had been validly expressed. However, the environment in which the elections had taken place had been conducive to allegations of fraud and the climate had deteriorated further following the announcement of the results of "exit polls" after the first round of voting on 9 April which had differed sharply from the results of previous opinion polls. The delay in announcing the official results, in response to a recommendation by the Office of the Ombudsman, had fuelled suspicions of fraud. The final first-round results had given the opposition Perú Posible party 40.24 per cent of the vote and the ruling Perú 2000 party 49.87 per cent.

49. The second round of voting scheduled for 28 May had been seriously disrupted by the withdrawal of the Perú Posible candidate and his appeal to the electorate to refrain from voting, despite the fact that the Government had provided all observer missions with every facility and

had set up an international press centre for both rounds of the election. The Prime Minister's Office had operated a helpline from February 2000 to offer the public information about the electoral process and had sent instructions to all ministries regarding proper behaviour by public authorities and civil servants during the elections and prohibiting them from using public funds for or against individual presidential or congressional candidates. The Ombudsman had issued an "electoral supervision report" on the use of public funds during the election campaign. The Government and the public authorities in general were prohibited from interfering in any way in the affairs of the private media. The public media had been instructed to ensure objective and impartial coverage of the activities of the candidates. Both the public and the private media had provided all candidates with free airtime on an equitable basis. Even foreign monitoring missions had conceded that access to the media had improved during the second round of voting.

50. The OAS monitoring mission had decided to restrict its activities because, in its view, the date set for the second round did not leave sufficient time to bring about some of the procedural and other improvements that it viewed as essential. The date had been established, however, pursuant to article 11 of the Constitution, and the National Elections Board had ruled that any postponement would constitute a serious breach of the Constitution and the law. Other monitoring missions, including that of the European Union, had withdrawn on the same grounds and the Ombudsman had restricted his activities to the receipt and processing of complaints and applications for intervention in support of individual and community rights.

51. The allegation that the Executive had interfered in the formation of the National Elections Board to ensure that the candidacy of President Alberto Fujimori would not be challenged was unfounded. Of its five members, one was elected by the Supreme Court, one by the Board of Senior Prosecutors, one by the Lima Bar Association and two by the law faculties of the public and private universities respectively. The alleged flaws in President Fujimori's candidacy had been unanimously rejected and the actions to declare his candidacy void had been declared inadmissible by four votes to one.

52. Ms. MARAVI (Peru) replying to question 26, said that the Prefecture of Lima had no record of any application for personal safeguards on behalf of the journalists Gustavo Mohme Llona, Fernando Rospigliosi, Edmundo Cruz, Angel Paéz and José Arrieta. There was also no trace in the records of various police stations in Lima of any report of intimidation. However, a discreet security service had been stationed at the offices of *El Comercio* and *La República* to prevent, detect and/or foil any attack on the above-mentioned journalists.

53. At the request of members of Congress Ana Elena Townsend Diez Canseco and Anselmo Revilla Jurado, the Prefecture of Lima had dealt with a request for safeguards on behalf of journalists Angel Alfredo Páez Salcedo and Edmundo Cruz Vílchez.

54. With regard to the death threats against former Congressman Gustavo Mohme Llona, the National State Security Directorate had reported that, according to their investigations, the telephone calls he had received had been made from a public phone box and the perpetrators had not been identified.

55. Mr. QUESADA INCHAUSTEGUI (Peru), replying to question 27, said that the Indigenous Affairs Commission was a multisectoral body responsible for promoting closer coordination between the demands of the peasant and indigenous communities and the provision of services by the State. It coordinated policies, guidelines and norms, agreed procedures for attending to the interests, needs and problems of indigenous peoples, established advisory mechanisms on legislative and/or administrative measures likely to affect indigenous communities, promoted the establishment of mechanisms for the appointment of representatives of indigenous peoples in national and international forums, established links for purposes of coordination with other commissions and parliamentary committees, promoted the implementation of relevant information, education and communication strategies, conducted research and drafted standard-setting proposals for submission to Congress.

56. The indigenous peoples of Peru lived in areas of poverty, and in some cases extreme poverty, to which the Government allocated 40 per cent of the national budget. Poverty was usually accompanied by unemployment, malnutrition, illiteracy, low levels of education, environmental risks, and limited access to social and health services, including reproductive health and family planning services. The State was addressing the issue of poverty in indigenous areas through the education, health and agricultural sectors, the Office of the President and the Ministry for the Advancement of Women and Human Development (PROMUDEH). It was aware that its efforts had not succeeded in eliminating various forms of social exclusion and poverty, partly because the indigenous peoples themselves and their representative organizations had not been involved in the design and implementation of projects. Their own contributions in the areas of health, informal education, customary law and handling of technology had also been neglected. Increasing urbanization, cultural penetration by the media and the influence of the market economy had not reduced but increased exclusion and poverty. Bilingual members of indigenous communities who had migrated and forged links with outside markets had become estranged from their companions. Exclusion was closely related to illiteracy and the lack of prestige of the indigenous language. The situation was exacerbated by racial prejudice against indigenous peoples and city-country discrimination.

57. Of the 48 per cent of the population classified as poor according to official statistics, almost all were indigenous people from the mountain and jungle regions. Approximately 30 per cent of them lived in extreme poverty and were typically victims of forced displacement or terrorism, lived in remote areas, were monolingual and illiterate, and possessed neither land nor livestock. Although some progress had been made in combating extreme poverty, as borne out by an improvement in social indicators such as child and maternal mortality rates, child nutrition, education, literacy and access to other basic services, the programmes implemented had not been suited to the cultural aspirations and needs of the indigenous people. That was particularly the case in the jungle regions, where the results of programmes implemented fell far short of expectations.

58. Under the Constitution, the Peruvian State recognized the dignity of all persons under its jurisdiction, including the indigenous population, and their ethnic and cultural identity; they were guaranteed the enjoyment and exercise of universal rights and full citizenship. The State respected the right of the indigenous population to develop their own culture and to be governed by customary law, provided that they did not violate basic human rights. Family inheritance matters were dealt with under customary law whereas formal legislation governed the

distribution of community property. Nevertheless, in general, the community authorities were able to decide such matters irrespective of existing legislation. Customary law was passed on from one generation to another and from community authorities to the population as a whole and to new authorities. In the indigenous communities customary law co-existed with formal law and most disputes within and between the communities were resolved by means of customary law, in the native tongue and with due respect for indigenous values. When such disputes could not be resolved by customary law, particularly those between communities relating to ownership of land, livestock or other property, the district or provincial authorities would be called upon for the administration of formal justice. However, that gave rise to problems of compatibility between the two systems and some consideration needed to be given to means of reconciling them.

59. His Government would take all necessary steps to ensure that members of the indigenous communities enjoyed all the rights protected by the Covenant, as testified by its concern to adopt a comprehensive approach to such matters. In that connection, the national body responsible for the protection of intellectual property, in cooperation with the Technical Secretariat for Indigenous Affairs (SETAI), the Ministry of Agriculture and the Ministry of Fisheries, had drafted proposals for a system to protect the collective lore of the indigenous population as well as rules for access to their genetic resources. In October 1999, a meeting had been organized by SETAI with representatives of the indigenous populations participating in Peru's Standing Conference on Indigenous Peoples. Peru was the first country in the world to table a proposal for the protection of the collective lore of its indigenous peoples.

60. Education was the best means of combating discrimination, and an intercultural bilingual literacy project for the Peruvian Amazon region was being promoted, in cooperation with local community authorities. They were responsible for appointing people to promote literacy in the communities and to supervise and assess their work. Lastly, two bills aimed at implementing the provisions of ILO Convention No. 169 on indigenous and tribal peoples in independent countries had been prepared by the Congressional Human Rights Commission and submitted to PROMUDEH for consideration. Through SETAI, the Ministry had expressed the view that both bills should be the subject of consultation with the indigenous population.

61. Turning to question 28, he said that article 89 of the 1993 Constitution acknowledged the existence of rural and native communities, as legal entities which were free to organize themselves and their work and to use and dispose of their land, and independent in economic and administrative matters, in accordance with the law. Title to land of the rural and native communities was an inalienable right, except in the event of neglect. Legislation dating from 1957, 1974 and 1978 relating to the protection of indigenous land in the Amazon region had resulted in the grant of title and transfer of 7,379,941 hectares of land to a total of 149,106 indigenous inhabitants in 930 communities. Under legislation relating to forests and wildlife (Decree No. 21,147) two reservations had been established for a group of communities. However, it was estimated that 31 per cent of people living in indigenous settlements, irrespective of whether they were recognized as native communities, had claims to title pending.

62. There were discrepancies in the information provided on indigenous claims to title of land and legal support for such claims. Figures for recognized rural communities fluctuated

between 4,000 and 6,000, and reportedly some 3,300 communities were in need of assistance in connection with land claims. Reports on native communities referred to between 830 and 930 recognized communities, while according to other information there were around 300 unrecognized native communities without any title to land. There was some concern about the division, privatization and identification of community land through the grant of title provided for under the Land Act of 1995 and the Coastal Rural Communities (Grant of Title) Act of 1997. The Constitution and relevant legislation in force recognized that native and rural communities were free to opt for individual grant of title, which required approval by the General Assembly, the supreme community body.

63. Replying to question 29, he said that a multisectoral approach had been adopted to ensure the active participation of the indigenous population in education, employment and political life. Some of the public bodies involved, on which members of the indigenous community were represented and took part in the development of relevant programmes and projects, included PROMUDEH and the Ministries of Defence, Education, Health, Agriculture, Fisheries and Justice. In order to increase the participation of the indigenous population and to avoid discrimination against them, the Government had in 1998 launched an initiative for the development of that population, which included studies on their actual situation and the organization of the Andean and Amazonian Consultations. During the consultations, held in Cuzco and Iquitos, representatives of the respective indigenous communities had agreed on a common vision for their future up to the year 2005.

64. Ms. MARAVI (Peru), replying to question 30, said that the National Human Rights Council attached to the Ministry of Justice was responsible for disseminating information on human rights through programmes such as the "Training of human rights promoters" launched in 1999. The objective of the programme was to set up a multisectoral network of people who would promote human rights in their immediate social and working environment. In 1999 and 2000, a programme had been run for civil servants in the Ministry of Justice to heighten awareness of the duties they performed, with a view to achieving greater efficiency in the services provided to the public and the promotion of human rights. Between 1997 and 1999 the National Human Rights Council had also organized a number of seminars on human rights involving civil authorities, members of the police and armed forces and community leaders.

65. Human rights were also taught in Peruvian schools, although they were not included as a separate subject on the curriculum. The Ministry of Education had carried out training sessions for the preparation of curriculum guides on gender equality and the realization of human rights, and by 1999 had trained 20,380 teachers from 8,914 educational establishments. In the guide for the secondary school curriculum a cross-sectional approach had been adopted to the question of gender identity, which rejected all forms of social and gender discrimination and the ill-treatment of women.

66. For many years Peru's National Police had been following guidelines to ensure the observance of human rights in their duties; those guidelines were in strict compliance with the principles enshrined in international human rights instruments including the Covenant. Pursuant to a 1992 Ministry of Defence directive, the joint command of the armed forces had been laying down rules for the teaching, dissemination, promotion and protection of human rights and

international humanitarian law. Training programmes had been held for cadets, regular soldiers and officers, including courses which were taken into account for promotion purposes. Officers had also attended courses at the law school of the United States army.

67. Ms. GAITAN DE POMBO expressed her solidarity with the Peruvian people in the current, very complex political situation, which rendered it difficult to guarantee democracy and uphold the rule of law, and also her concern about their enjoyment of the rights protected by the Covenant, in particular those in articles 19 and 25.

68. She endorsed Mr. Bhagwati's remarks concerning the independence of the judiciary and the dismissal of judges without valid explanation. She also shared concerns expressed about the large numbers of people held incommunicado in pre-trial detention. The Committee had received numerous allegations from national and international NGOs of inhuman and degrading treatment and even the torture of such people, and had detailed information on the names of the detainees in question. Had there been any judicial proceedings pursuant to such complaints? Reportedly conditions were very bad at the Callas naval base and Challpalca, Yanomayo and Tacno prisons. Furthermore, was the agreement with ICRC still in force allowing it access to detainees?

69. She supported Ms. Evatt's observations on gender equality. While she welcomed the legislative and institutional reforms for the advancement of women, particularly among the indigenous population, the prevailing inequities were nonetheless a matter of concern.

70. The delegation's replies concerning the implementation of article 25 of the Covenant were not satisfactory given the numerous reports, including reports by independent observers, of electoral fraud, use of public funds to promote government candidates, restricted access to the media and lack of independent electoral authorities during the latest elections. The delegation had also failed to mention the fact that several groups of independent election observers, including the European Union group, had left Peru in protest at the conditions in which the elections had been conducted. Had any charges been brought against the persons involved? And was any consideration being given on how to improve electoral procedures and the independence of the relevant authorities during the next elections?

71. The Committee had also received many complaints regarding press freedom (Covenant art. 19). What were the delegation's views on reports by Inter-American Press Society and the rapporteur on freedom of the press of the Inter-American Commission on Human Rights on the current climate of legal insecurity that was hampering press freedom? Had any disciplinary or criminal proceedings been pursued in that connection? Lastly, what safeguards did the Government provide for human rights NGOs operating in Peru to enable them to carry out their work in an independent and critical fashion?

72. Mr. HENKIN said that from the delegation's replies it seemed there might be discrimination against non-Catholic or lay members of the population. For instance, were public funds made available for the education of Catholic children that were not available for others? In response to a question by Ms. Evatt, the delegation had promised that it would provide statistics on the number of temporary and titular judges in Peru. The Committee needed such statistics in order to assess the degree of independence of the judiciary. How many cases affecting the life,

liberty and property of Peruvian citizens were tried by judges who did not have guarantees of independence? He would also welcome statistics on the number of civilian offences tried in military courts. By definition, military judges were not independent, and yet it seemed they were responsible for adjudicating cases of treason, espionage and terrorism. Such a situation was merely part of the larger problem of military infiltration into the civilian life of Peru, which called in question compliance with the provisions of the Covenant.

73. Mr. SCHEININ commended Peru for its submission of a separate report in response to the Committee's concluding observations on the previous periodic report - one way of improving current reporting procedures and an example to be followed by other States parties.

74. While he acknowledged the fact that Peru was one of the countries where there was a new awareness of the importance of indigenous culture and the many positive developments in that connection (demarcation of land, protection of collective lore, attention to women, recognition of the university in the Amazon region), the information contained in the report was unsatisfactory and in some cases inconsistent. He was aware that a number of programmes had been launched relating to reproductive health, targeted at indigenous women; however, he was concerned about the proper use of the sterilization programme. What were the delegation's views on reports of door-to-door campaigns to induce indigenous women to accept sterilization, with consent forms available in Spanish only?

75. Paragraph 5 of the fourth periodic report provided an example of the type of inconsistency in the Government's approach to indigenous matters, by quoting article 1.2 of the Covenant as providing that every State party might freely dispose of its national wealth and resources, when in fact it provided for all peoples to do so. The indigenous population must be involved in decision-making on the distribution of natural wealth and resources, particularly in the Amazon region, where there seemed to become some conflict between the interests of the State and the role of indigenous communities. Despite the land distribution programme under way, the State clearly had an interest in promoting oil and mineral exploitation and private investment, which was not in keeping with the wishes of the indigenous population. What progress had been made in the area? And were the provisions of ILO Convention No. 169 being fully complied with?

76. What steps had the Government taken to facilitate the return of the Ashaninka people - victims of violence and forced displacement - to their homelands and the resumption of their traditional activities? While he was aware of government efforts to stop large-scale logging projects on the territory traditionally inhabited by the Tahuamanu community, he asked what steps were being taken to prevent their extinction through illness due to contact with outsiders involved in illegal logging projects.

The meeting rose at 1 p.m.